



# UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,222	06/04/2001	David Jeffrey Miller	10010869-1	4537
7590	11/06/2006			EXAMINER TUCKER, WESLEY J
			ART UNIT 2624	PAPER NUMBER

DATE MAILED: 11/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)
	09/873,222	MILLER ET AL.
Examiner	Art Unit	
Wes Tucker	2624	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 16 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- The period for reply expires 3 months from the mailing date of the final rejection.
- The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- They raise new issues that would require further consideration and/or search (see NOTE below);
- They raise the issue of new matter (see NOTE below);
- They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 4, 5, and 12-15.

Claim(s) withdrawn from consideration: 1-3 and 6-11.

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_

  
BHAVESH M. MEHTA

SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's remarks have been considered but are not persuasive from at least the following reasons:

Applicant argues that the reference to Shiota does not disclose "enhancing" anywhere in its disclosure. Examiner disagrees and points out that "enhancing" will be interpreted as any desirable augmentation or manipulation of image data. Shiota discloses generating a manipulated print according to instructions sent along with the image (column 4, lines 55-64 and column 5, lines 12-21). The disclosure of Shiota describes a networked system of photo labs. It should be exceedingly clear that the photo labs are for the purpose of processing and enhancing images.

Applicant then goes on to argue that Echerer does not disclose an enhancement description packet that describes the enhancements made for each of the digital images. Applicant cites the identifying information of Echerer affixed to the received image and argues that this identifying information does not contain the enhancements made to the image. Applicant cites Echerer column 6, lines 19-24 for the description of the identification information. Examiner points to the passage just below this in Echerer column 6, lines 31-37 where Echerer explicitly discloses that: "A report is prepared using the information and the image together with its enhancements and/or without them; the report is stored in a third memory location and also printed on the laser printer or possibly transmitted by a modem to a remote user." It is exceedingly clear that the report contains image information as well as image enhancement information as well as identification information. The report is considered to be an enhancement description packet. It is unclear why Applicant insists that the report does not contain information that describes the enhancements made for the digital images when it so clearly does.

The purpose of Echerer's apparatus as previously discussed in the final Office Action is to enhance images and keep track of the enhancements performed. Echerer teaches that keeping these kind of records of image enhancements are good practice and also teaches that the enhancements can be reproduced when the enhancements are stored (column 3, lines 1-11). Therefore it would have been obvious to one of ordinary skill in the art to use the practice of sending a user the enhanced images along with the image enhancement information in order to keep a record of the enhancements as well as making the image enhancements reproducible as taught by Echerer in the environment of Shiota because Shiota already describes sending the user feedback information about the image and enhancements via email (column 9, lines 50-53). It would be a logical step to send Echerer the image enhancements as taught by Shiota.

Therefore the Final rejection previously presented is maintained. Shiota discloses remote image processing/editing systems that accept input from a customer. The remote image processing systems process the images and make them available for output and send the user or customer information regarding their order. Echerer describes a more detailed account of enhancing images and transmitting enhanced images along with information on the specific enhancements made. It should be abundantly clear that these two inventions are analogous and combinable art.